

§ 4.626

of the following that are relevant to the decision:

- (a) Your eligibility and status as a prevailing party;
- (b) The amount awarded, and an explanation of the reasons for any difference between the amount requested and the amount awarded;
- (c) Whether the position of the Department or other agency was substantially justified;
- (d) Whether you unduly protracted the proceedings; and
- (e) Whether special circumstances make an award unjust.

§ 4.626 How will an appeal from a decision be handled?

(a) If the adjudicative officer is an administrative law judge, you or the Department or other agency may appeal his or her decision on the application to the appeals board that would have jurisdiction over an appeal involving the merits of the proceeding. The appeal will be subject to the same regulations and procedures that would apply to an appeal involving the merits of the proceeding. The appeals board will issue the final Departmental or other agency decision on the application.

(b) If the adjudicative officer is a panel of appeals board judges, their decision on the application is final for the Department or other agency.

§ 4.627 May I seek judicial review of a final decision?

You may seek judicial review of a final Departmental or other agency decision on an award as provided in 5 U.S.C. 504(c)(2).

§ 4.628 How will I obtain payment of an award?

(a) To obtain payment of an award against the Department or other agency, you must submit:

- (1) A copy of the final decision granting the award; and
- (2) A certification that no party is seeking review of the underlying decision in the United States courts, or that the process for seeking review of the award has been completed.

(b) If the award is against the Department:

43 CFR Subtitle A (10–1–08 Edition)

(1) You must submit the material required by paragraph (a) of this section to the following address:

Director, Office of Financial Management, Policy, Management and Budget, U.S. Department of the Interior, Washington, DC 20240.

(2) Payment will be made by electronic funds transfer whenever possible. A representative of the Department will contact you for the information the Department needs to process the electronic funds transfer.

(c) If the award is against another agency, you must submit the material required by paragraph (a) of this section to the chief financial officer or other disbursing official of that agency. Agency counsel must promptly inform you of the title and address of the appropriate official.

(d) The Department or other agency will pay the amount awarded to you within 60 days of receiving the material required by this section.

Subpart G—Special Rules Applicable to Other Appeals and Hearings

AUTHORITY: 5 U.S.C. 301.

§ 4.700 Who may appeal.

Any party aggrieved by an adjudicatory action or decision of a Departmental official relating to rights or privileges based upon law in any case or proceeding in which Departmental regulations allow a right of appeal to the head of the Department from such action or decision, should direct his appeal to the Director, Office of Hearings and Appeals, if the case is not one which lies within the appellate review jurisdiction of an established Appeals Board and is not excepted from the review authority delegated to the Director. No appeal will lie when the action of the Departmental official was based solely upon administrative or discretionary authority of such official.

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971]

§ 4.701 Notice of appeal.

The appellant shall file a written notice of appeal, signed by him or by his